

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 305 of 2017

Saleshni Lata

Plaintiff

v

Razmi Devi Pal

Defendant

Counsel: Mr Ashneel .Nand for the plaintiff

Mr Anand Singh for the defendant

Date of hearing: 29th May,2020

Date of Ruling : 31st August,2020

Ruling

1. The plaintiff, in her summons seeks leave to appeal from an Interlocutory Ruling of the Master of 18th May,2020, setting aside a default judgment entered against the defendant and dismissing her action on the ground that it is statue barred and commenced outside the limitation period without leave of Court.
2. Mr Singh, counsel for the defendant contended that the Master has finally decided the rights and matters in dispute between the parties. Leave to appeal.is not required.
3. The Master made her Ruling on a summons issued by the defendant.

4. Since the decision in *Goundar v The Minister for Health*, (Civil Appeal No. ABU 0075 of 2006 S) it is settled law that the test whether an interlocutory or final depends on the nature of the *application* and not the order approach.
5. In my view, the Ruling of the Master is an Interlocutory Ruling and requires leave.
6. The plaintiff, in her statement of claim stated that by a transfer of 18th December,2008, the defendant agreed to purchase her property at \$700,000.00 The defendant paid \$ 250,000.00 at the time of settlement. The plaintiff claimed the outstanding proceeds of the sale.
7. The plaintiff, in her supporting affidavit states that the Master erred in law and in fact on the following grounds:
 - i. *In entertaining the legal issue in terms of Order 33 rule 3 of the High Court Rules the jurisdiction which the Learned Acting Master did not possess.*
 - ii. *In failing to interpret Section 8 of the Limitations Act and reaching to a conclusion that Section 4 of the Limitations Act is applicable.*
 - iii. *In failing to note that the cause of actions for the Appellant against the Respondent is of recovery of sale proceeds of land and not a breach of contract.*
 - iv. *In reaching to a conclusion at paragraph 38 of the Ruling that the claim should have been made within 6 years with effective from 24 December 2008 that is before 24 December 2014 when in effect the limitation period for recovery of sale proceeds is 20 years.*
 - v. *In failing to note that the Respondent is on the verge of selling the only property in New Zealand from which the Appellant can have her claim satisfied.*
8. The defendant, in her affidavit in reply states that the agreement between the parties was subject to an offer letter issued by Dominion Finance Ltd,(DFL). DFL took the property as security. She did not receive any balance monies on the mortgagee sale of the property. The sale proceeds were paid to DFL. Section 4 of the Limitation Act applies.
9. The Master, in her Ruling stated that the plaintiff's interest ceased, when the property was transferred to the defendant, The only interest registered was that of DFL The Master held that the plaintiff is not entitled to rely on section 8 of the Limitation Act. The claim should have been made within 6 years from 24th December,2008, when the transfer documents were registered with the Registrar of Titles.

10. Mr Nand, counsel for the plaintiff contended that the period of limitation to claim the balance of sale proceeds is 20 years from the date of settlement. The action was filed within time.
11. Mr Singh argued that the claim should have been filed within 6 years from 24th December,2008. The Master's decision was correct.
12. The matter turns on the question whether the plaintiff's action is barred by the Limitation Act. The relevant sections are section 4 and section 20 .Section 4 states an action founded on a contract cannot be brought after the expiration of 6 years. Section 8 states that that an action to recover sale proceeds of the sale of land after the expiration of 20 years "*from the date when the right to receive the money accrued*".
13. In *Ex parte Bucknell*,[1936] 56 CLR 221 at pgs 224 to 225 the Court stated :

..the prima facie presumption is against appeals from interlocutory orders, and therefore, an application for leave to ..should not be granted as of course without consideration of the nature and circumstances of the particular case...

There is one class of case which raises little difficulty. If the interlocutory order.. has the practical effect of finally determining the rights of the parties, though it is interlocutory a prima facie case exists for granting leave to appeal. For example, a judgment for either party on a demurrer might, in effect, be decisive of the whole litigation. Although such a judgment would often be interlocutory, it might be final in determining the issue between the parties, and, in such a case, leave would be granted almost as of course. (emphasis added)
14. Calanchini P in *Shankar v FNPF Investments Ltd*,[2017] FJCA 26; ABU32.2016 (24 February 2017) at paragraph 16 stated:

There is a general presumption against granting leave to appeal an interlocutory decision and that presumption is strengthened when the judgment or order does not either directly or indirectly finally determine any substantive right of either party. The interlocutory decision must not only be shown to be wrong but it must also be shown that an injustice would flow if the impugned decision was allowed to stand (Niemann -v- Electronic Industries Ltd[1978] VR 431). See: Hussein -v- National Bank of Fiji [1995] 41 Fiji LR 130. In the present proceedings the learned High Court Judge dismissed the striking out application made by Shankar under Order 18 Rule 18(1). The decision did not affect the substantive rights of either party.(emphasis added)

15. In the present case, the issue raised on the applicability of the stated provisions of the Limitation Act raise an important question of law.
16. In my view, the plaintiff will suffer substantial injustice, if leave is not granted.
17. In the circumstances, I grant the plaintiff leave to appeal the Ruling of the Master on the issue raised on the period of limitation.
18. **Orders**
 - b. Leave to appeal the order of the Master is granted.
 - c. The proceedings are stayed until determination of the appeal.
 - d. Costs are to be costs in the appeal.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
31st August, 2020